

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Multilateral Trade Negotiations  
Group "Safeguards"

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## STATEMENT BY REPRESENTATIVE OF AUSTRALIA ON 15 FEBRUARY 1977

Article XIX of the GATT provides the legal cover and lays down the conditions under which contracting parties may suspend obligations under the General Agreement for the purposes of providing emergency protection to domestic industry. However the investigatory phase of the work of the Safeguards Group has yielded convincing evidence that many, perhaps most, safeguard actions are taken without recourse to this Article and thus without falling under its disciplines.

The principal problem with Article XIX is thus simply that it is evaded.

This is not to deny that there may be defects in the Article itself. For example it has been suggested that the retaliatory provision of Article XIX is in part responsible for evasion of it. On the other hand, it has also been suggested that Article XIX is not rigorous enough in its invocation criteria, notification/consultation requirements, time-limits etc.

Australia does not reject these suggestions out of hand, but notes that little convincing evidence has been forthcoming that the countries who regularly resort to Article XIX have abused it. Accordingly, the net result of a review of the safeguard clause along the lines of the United States proposal would be that new disciplines would be brought to bear on Australia but other countries which evade Article XIX would remain untouched by them.

How then should we proceed? It does not seem sensible or equitable to confine attention to the review of Article XIX, since it is not defects in the Article but evasion of it which is the main problem. Moreover the safeguards system is not confined to Article XIX. There are other provisions of the GATT under which countries take escape action which are not subject to the same disciplines as action under the safeguard provisions of Article XIX.

How can we tackle the problem of evasion? It is not realistic simply to expect countries to invoke Article XIX as the legal basis of measures which are inconsistent with, or outside the GATT. In many cases these measures are an integral part of the import régimes of the countries in question and to seek Article XIX cover for them would be scarcely compatible with an underlying premise of that Article, that the measure is for emergency purposes only.

In our view the only practical way of dealing with the safeguards question is to engage in negotiations which embrace both adjustments to the GATT and adjustments by countries in respect of measures they actually operate.

The logical place for such negotiations to occur is in the NTM's Group. Thus, we have already suggested in the Quantitative Restrictions Sub-Group ways in which the quantitative restriction rules could be changed so that they would more efficiently regulate modern trading conditions and the domestic requirements of governments. This would not relieve governments of the necessity of making changes in the way they presently use quantitative restrictions, but would provide the device with a more rational underpinning. A similar exercise would need to be carried out in connexion with other measures such as variable levies and minimum import prices.

If negotiations proceeded along these lines, the upshot would be that governments normal practice as regards the instruments of protection would be in conformity with GATT law and, in emergency situations, they would resort to the multilateral safeguard system to suspend those obligations. In these circumstances those countries which now rarely, if ever, seek the cover provided by specific safeguard provisions would be obliged to do so in the same manner in which Australia, Canada and the United States have in the past.

We would not in this connexion exclude consideration of tariffs. However a distinction has to be made here between methods of protection and levels of protection.

The substantive provisions of the GATT are largely concerned with laying down rules about the methods used by countries to protect their domestic industries. The core concept here is that protection should only be provided by the tariff, because it makes the extent of protection clear and competition possible.

As regards levels of protection represented by the tariff, the GATT does not lay down any rule, save the injunctions in the preamble and Article XXVIII bis that countries should enter into negotiations to reduce them "on a reciprocal and mutually advantageous" basis.

Now the negotiation on levels of protection is an important part of the MTN. It is the main issue in the Tariffs Group. Also Australia, and a number of other countries, have been trying to get the issue raised in connexion with the means of protection afforded agriculture, i.e. we want to negotiate on the levels of protection represented by devices such as variable levies, quantitative restrictions etc.

Naturally, we do not think it is appropriate to transfer these negotiations to the Safeguards Group -but this is exactly what would seem to be implied by the suggestion that all tariffs be bound at the end of the MTN. This is a proposal that relates to the negotiation on levels of protection and should only be considered in the context of similar proposals to bind the means of agricultural protection.

So much for the forum in which the tariff as a level of protection should be negotiated. What about the tariff as a method of protection? Here the obvious forum is the NTM's Sub-Group on Customs Matters which is now involved in detailed consideration of the rules that should apply to tariffs. This contrasts with the absence of similar progress on quantitative restrictions, variable levies etc.

Thus Australia's approach to the negotiation on Safeguards has the following elements:

- (a) Work should proceed in the NTM's Group to establish comparable footing of commitment between countries in the methods of protection they use, i.e. the GATT rules should cover all the forms of protection that countries use, and all countries should observe those rules. This will almost certainly involve the establishment of new sub-groups to look at certain measures so far unexamined in the MTN.
- (b) Provided the work referred to in (a) proceeds satisfactorily the review of Article XIX should proceed. Presumably this would be based less on the fact that the Article has been abused in the past, than on the fact that it would be used much more frequently in the future.
- (c) The issue of levels of protection would be left for negotiation in the Tariff and Agriculture Groups.